



**IN THE SUPERIOR COURT OF DELAWARE**

BRADLEY BAKOTIC and  
JOSEPH HACKEL,

Plaintiffs.

v.

BAKOTIC PATHOLOGY LP and  
BPA HOLDING CORP.,

Defendants.

Civil Action No.  
\_\_\_\_\_

**COMPLAINT FOR DECLARATORY JUDGMENT**

For their Complaint against Defendants BAKOTIC PATHOLOGY LP and BPA HOLDING CORP., Plaintiffs Bradley Bakotic and Joseph Hackel allege as follows:

1. In this action, Plaintiffs seek a declaration that the post-term covenants not to compete contained in their employment and partnership agreements are void or otherwise unenforceable.

**Parties, Jurisdiction and Venue**

2. Dr. Bradley Bakotic, D.P.M., D.O. ("Plaintiff Bakotic") is a licensed and, until recently, doctor of podiatric medicine and practicing doctor of osteopathic medicine.

3. Dr. Joseph Hackel, M.D. ("Plaintiff Hackel") is a licensed and, until recently, practicing medical doctor.

4. BAKOTIC PATHOLOGY LP ("Defendant Partnership") is a partnership formed in accordance with Delaware's Limited Partnership Act. Defendant Partnership may be served with process by delivering a copy of this Complaint and the Summons to its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

5. BPA HOLDING CORP. (“Defendant BPA”) is a Delaware corporation. Defendant BPA may be served with process by delivering a copy of this Complaint and the Summons to its registered agent, The Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, and/or The Prentice-Hall Corporation System, Inc., 251 Little Falls Drive, Wilmington, Delaware 19808.

6. This Court has jurisdiction over the subject matter of this action, which is devoid of any equitable subjects, claims or rights. Plaintiffs assert neither equitable claims for relief nor claims arising pursuant to a statute vesting jurisdiction in another court.

7. This Court has jurisdiction over Defendant Partnership and Defendant BPA’s persons.

8. Venue of this action in New Castle County is proper.

#### **Defendants’ Relationship**

9. Defendant Partnership owns Defendant BPA.

10. Defendant BPA is the sole member of non-party BAKOTIC PATHOLOGY ASSOCIATES, L.L.C. (the “Company”), a Georgia limited liability company.

11. The Company provides clinical pathology, anatomic pathology, and dermatopathology-related services at its principal place of business, 6240 Shiloh Road, Alpharetta, Georgia 30005.

#### **Plaintiff Bakotic**

12. Until around or about September 13, 2017, the Company employed Plaintiff Bakotic as its C.E.O.

13. In connection with his employment by the Company, Plaintiff Bakotic signed an *Employee Confidentiality, Non-Solicitation and Non-Competition Agreement* with BPA on or

about November 18, 2011 (the “Non-Competition Agreement”). A true and correct copy of the Non-Competition Agreement is attached hereto as Exhibit 1.

14. Paragraph 1 of the Non-Competition Agreement states in full as follows:

While Employee is engaged by the Company, Employee agrees that during the term of Employee’s employment by the Company, other than in the proper performance of Employee’s employment duties for the Company, and for a period of twenty-four (24) months after such employment terminates for any reason (other than a without cause termination by the Company), Employee shall not perform the same or similar duties that he or she performed for the Company on behalf of or for the benefit of (i) any laboratory and/or health care provider which competes with the Company, or (ii) any customer or client of the Company for whom the Company provided services within two years prior to Employee’s termination from the Company. The restriction herein is limited to the territory where the Company was doing business at the time of termination.

[See Non-Competition Agreement, Exhibit 1.]

15. A true and correct copy of Defendant Partnership’s Amended and Restated Limited Partnership Agreement dated January 7, 2016 (the “Partnership Agreement”) is attached hereto as Exhibit 2. Paragraph 6.5.1 of the Partnership Agreement states in pertinent part as follows:

None of the Limited Partners nor any of their respective Affiliates or Affiliated Funds shall have any business interests or engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership or any of its Subsidiaries ....

[See Partnership Agreement, Exhibit 2.]

16. At all relevant times, Plaintiff Bakotic was, and presently is, a limited partner of Defendant Partnership.

17. At all relevant times, Defendant Partnership was, and presently is, engaged, directly or indirectly, in the business of providing anatomic pathology testing services.

18. At all relevant times, the Company was, and presently is, a subsidiary of Defendant Partnership.

19. Now that he is no longer employed by the Company, Plaintiff Bakotic intends to form a pathology laboratory and perform both executive and medical functions on its behalf.

**Plaintiff Hackel**

20. Until around or about September 30, 2017, the Company employed Plaintiff Hackel as a practicing medical doctor.

21. Plaintiff Hackel alleges upon information and belief that, in connection with his employment by the Company, Plaintiff Hackel also signed a Non-Competition Agreement.

22. Now that he is no longer employed by the Company, Plaintiff Hackel intends to continue to provide pathology services in his capacity as a physician.

**Count I: Declaratory Judgment**

23. Plaintiff Bakotic and Plaintiff Hackel incorporate Paragraphs 1 through 22 of their Complaint by reference herein.

24. Plaintiff Bakotic and Plaintiff Hackel are uncertain and insecure with respect to whether the Non-Competition Agreement and/or Partnership Agreement preclude them from providing pathology services in competition with Defendant Partnership and/or the Company.

25. There is a controversy involving Plaintiff Bakotic and Plaintiff Hackel's rights, statuses or other legal relations.

26. This controversy is between adverse parties to this action.

27. As evidenced by Defendants' Answer, the controversy is real.

28. The issue of whether Plaintiff Bakotic and Plaintiff Hackel's covenants not to compete are enforceable is ripe for judicial determination. Plaintiff Bakotic and Plaintiff Hackel

have a legitimate interest in timely securing new employment in their fields of specialty, which requires prompt resolution of the question presented. Failure to do so would work a hardship on Plaintiff Bakotic and Plaintiff Hackel. No additional facts are needed to resolve this controversy, which is purely one of law. Resolving this issue would not overly burden judicial resources because, again, the fulcrum of the controversy rests on a legal question and the underlying dispute between the parties will end upon a judicial declaration.

29. Paragraph 1 of the Non-Competition Agreement and Paragraph 6.5.1 of the Partnership Agreement are both void pursuant to 6 Del. C. § 2707, which provides in pertinent part as follows:

Any covenant not to compete provision of an employment, partnership or corporate agreement between and/or among physicians which restricts the right of a physician to practice medicine in a particular locale and/or for a defined period of time, upon the termination of the principal agreement of which the said provision is a part, shall be void ....

30. Paragraph 1 of the Non-Competition Agreement and Paragraph 6.5.1 of the Partnership Agreement would harm the public interest and, accordingly, the Court should hold them to be invalid.

31. Paragraph 1 of the Non-Competition Agreement would work an undue hardship on Plaintiffs and, accordingly, is more restrictive than the Company's legitimate interests justify.

32. Paragraph 6.5.1 of the Partnership Agreement is unenforceable because it is broader than necessary to protect Defendant Partnership's legitimate economic interests. For example, this provision purports to restrict even passive, minority investment in competing businesses.

33. Paragraph 6.5.1 of the Partnership Agreement is unenforceable because it is devoid of any geographic restriction.

**Prayer for Relief**

34. Accordingly, Plaintiff Bakotic and Plaintiff Hackel request the Court:

- a. Declare Paragraph 1 of the Non-Competition Agreement and Paragraph 6.5.1 of the Partnership Agreement void and unenforceable;
- b. Award Plaintiff Bakotic his reasonable fees, costs and expenses pursuant to Section 12.12 of the Partnership Agreement; and
- c. Award Plaintiff Bakotic and Plaintiff Hackel their costs pursuant to 10 Del. C. § 6510.

Dated: December 27, 2017.

/s/ Robert J. Cahall  
**ROBERT J. CAHALL**  
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